

## **FINAL ACTION**

### ***Specification***

1. As set forth in the Non-Final Rejection of June 21, 2007, section 3, the specification contains numerous grammatical errors. 35 U.S.C. 112, first paragraph, requires the specification to be written in “full, clear, concise, and exact terms”. The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph.

Additionally, Applicant’s amendment to the specification of September 18, 2007, is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: “fluffy”, “made from down and feather”, and “shaggy”.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

2. Claims 2 and 6 are objected to because of the following informalities: claim 2 should recite “consists of” instead of “consisting of”. Claim 6 contains numerous grammatical errors. Appropriate corrections are required.

3. It should be noted that claims 3-5 and 7 recite in the status identifiers that the claims are canceled. However, the claims recite text with a line strikethrough the text. Claims which are cancelled should not recite text.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 2 and 6, claim 1 recites that the wadding consists of feathers. However, the claim recites that the hooks of the feathers are bonded together by adhesives. The transitional phrase “consisting of” excludes any element, step, or ingredient not specified in the claim. It is unclear whether Applicant intends to claim that the wadding only consists of feathers without any additional elements, or that the wadding consists of feathers and adhesives and any other additional elements, which would be contrary to the interpretation of the transitional phrase “consisting of”. Additionally, Applicant recites that the feathers have barbs, tiny barbs and hooks. It is unclear what structure is intended with the recitation of the barbs, tiny barbs and hooks as the disclosure including the drawings does not reasonably describe “barbs, tiny barbs, hooks.” Additionally, it is unclear what is intended by the term “tiny” as the word is subjective and requires a standard of comparison and magnitude which is not described in the specification.

Regarding claim 6, the claim recites that the “adhesive is low melting point fibers” (sic). It is unclear how the adhesive is a fiber as Applicant’s specification does not disclose that the adhesive is a fiber.

***Claim Rejections - 35 USC § 102/103***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Pub. No. 2002/0007900 to Keller.

Regarding claims 1 and 2, Keller teaches a heat-retaining feather wadding consisting of feathers having barbs, tiny barbs and hooks, the feathers being formed as a web piece structure by intercrossing and interlinking the feathers, the crossing and linking points of the barbs, tiny barbs, hooks of the feathers are bonded together by adhesive (see entire document including paragraphs 0002, 0006-0011, 0013-0016).

Regarding claim 2, the adhesive consists of polyurethane or polypropylene acid ester or poly-acetate ethyl ester or poly-chlorine ethane or propylene acid emulsion (paragraph 0015).

In the event it is shown that Keller does not disclose the claimed invention with sufficient specificity, the invention is obvious because Keller discloses the claimed constituents and discloses that they may be used in combination.

***Response to Arguments***

8. Applicant's arguments filed September 18, 2007, have been fully considered but they are not persuasive. Applicant argues that "[t]he present invention utilizes the barbs or filaments of the feathers after they have been removed from the center quill". It is presumed that Applicant is referring to the invention of Keller as the "present invention". Additionally, Applicant argues that the product of claim 1 is feather wedding (sic), but Keller is composite filament. Lastly, Applicant argues that claim 1 only includes feathers and adhesive, not a thermoplastic binder.

Regarding Applicant's arguments, Examiner respectfully disagrees. Keller teaches feathers and utilizing the barbs or filaments of the feathers to combine the feathers and barbs. Applicant's arguments that the barbs or filaments, whether removed or not, differentiates the structure of the claimed invention from the prior art is not persuasive as Keller teaches that the barbs of the feathers and the feathers are utilized in the invention of Keller.

Regarding Applicant's argument that the product of claim 1 is feather wedding (sic) but Keller is composite filament is similarly not persuasive. It is presumed that Applicant intended to recite that the product of claim 1 is feather wadding. The structure and composition of the invention of Keller is identical or substantially similar to the claimed invention. As Applicant has not associated any other properties with the feather wadding, and as Keller appears to disclose each of the structural and compositional requirements of the claimed invention, Keller appears to anticipate the claimed invention.

Regarding Applicant's argument that claim 1 only includes feathers and adhesive, not a thermoplastic binder, Examiner respectfully disagrees. As set forth above, it is unclear whether Applicant intends to claim that the wadding only consists of feathers without any additional

Art Unit: 1794

elements, or that the wadding consists of feathers and adhesives and any other additional elements, which would be contrary to the interpretation of the transitional phrase “consisting of”. However, page 2 of Applicant’s specification and currently amended claim 2 teaches that the adhesive may comprise polyurethane or polypropylene acid ester or poly-acetate ethyl ester or poly-chlorine ethane or propylene acid emulsion. Similarly, Keller teaches that the adhesive or binder may comprise polyurethane or polypropylene acid ester or poly-acetate ethyl ester or poly-chlorine ethane or propylene acid emulsion. The adhesive or binder of Keller is identical to the adhesive as disclosed and claimed by Applicant. Therefore, Keller appears to anticipate the claimed invention.

***Claim Rejections - 35 USC § 102/103***

9. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,232,249 to Kawada.

Regarding claims 1 and 6, Kawada teaches a heat-retaining feather wadding consisting of feathers having barbs, tiny barbs and hooks, the feathers being formed as a web piece structure by intercrossing and interlinking the feathers, the crossing and linking points of the barbs, tiny barbs, hooks of the feathers are bonded together by adhesive (see entire document including column 1 lines 8-25, column 1 lines 49-64, column 2 lines 11-24, column 3 lines 7-20).

Regarding claim 6, the adhesive is low melting point fibers consisting of alkali polyester fiber, polypropylene fiber or fibers mixture of Polypropylene fiber with polyethylene fiber (column 3 lines 7-20).

Regarding claim 6, Kawada does not appear to disclose that the melting point of said chemical textile fibers with low melting point is from 110°C to 140°C. However, the claimed property is deemed to be inherent to the structure in the prior art since the Kawada reference teaches chemical textile fibers with a similar structural and chemical composition as the claimed invention (Kawada, column 3 lines 13-20). Properties are the same when the structure and composition are the same. The burden is on the Applicant to prove otherwise.

In the event it is shown that Kawada does not disclose the claimed invention with sufficient specificity, the invention is obvious because Kawada discloses the claimed constituents and discloses that they may be used in combination.

### ***Response to Arguments***

10. Applicant's arguments filed September 18, 2007, have been fully considered but they are not persuasive. Applicant argues that Kawada does not teach adhesive in the invention and that claim 1 precludes the addition of short fibers. It should be noted that Applicant argues the Kawada reference individually when the rejection of June 21, 2007, cited the combination of Kawada in view of Barhite. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. However, due to the new grounds of rejection, Applicant's arguments are addressed.

Examiner respectfully disagrees with Applicant's arguments. As best Examiner can determine, claim 6 recites that the *adhesive* is low melting point fibers consisting of alkali polyester fiber, polypropylene fiber or fibers mixture of Polypropylene fiber with polyethylene fiber, they have melting point from 110°C to 140°C. Therefore, the adhesive of claim 1 may

Art Unit: 1794

comprise the fibers set forth in claim 6. Since Kawada teaches a substantially similar structure and composition as the claimed invention, Kawada appears to anticipate the claimed invention.

11. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Pub. No. 2002/0034637 to Yoshioka.

Regarding claims 1 and 6, Yoshioka teaches a heat-retaining feather wadding consisting of feathers having barbs, tiny barbs and hooks, the feathers being formed as a web piece structure by intercrossing and interlinking the feathers, the crossing and linking points of the barbs, tiny barbs, hooks of the feathers are bonded together by adhesive (see entire document including paragraphs 0002-0009, 0013-0017, 0034, 0035).

Regarding claim 6, the adhesive is low melting point fibers consisting of alkali polyester fiber, polypropylene fiber or fibers mixture of Polypropylene fiber with polyethylene fiber, they have melting point from 110°C to 140°C (paragraph 0015).

Regarding claim 6, Yoshioka does not appear to disclose that the melting point of said chemical textile fibers with low melting point is from 110°C to 140°C. However, the claimed property is deemed to be inherent to the structure in the prior art since the Yoshioka reference teaches chemical textile fibers with a similar structural and chemical composition as the claimed invention (paragraph 0015). Properties are the same when the structure and composition are the same. The burden is on the Applicant to prove otherwise.

In the event it is shown that Yoshioka does not disclose the claimed invention with sufficient specificity, the invention is obvious because Yoshioka discloses the claimed constituents and discloses that they may be used in combination.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Y. Choi whose telephone number is (571) 272-6730. The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794

/Peter Y. Choi/  
Examiner, Art Unit 1794  
October 31, 2007